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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 LF CENTENNIAL LIMITED, a British  
12 Virgin Islands corporation,  
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14 Plaintiff,  
15 v.  
16 Z-LINE DESIGNS, INC., a Nevada  
17 corporation; and DOES 1 through 100,  
18 inclusive,  
19 Defendant.

Case No.: 16cv929 JM (NLS)

**ORDER GRANTING PLAINTIFF'S  
MOTION TO MODIFY  
SCHEDULING ORDER AND FOR  
LEAVE TO FILE FIRST AMENDED  
AND SUPPLEMENTAL  
COMPLAINT; DENYING  
DEFENDANT'S MOTION TO  
STRIKE**

19 On June 13, 2018, Plaintiff LF Centennial Limited ("LFCL") moved the court to  
20 modify the scheduling order and for leave to file a first amended complaint. (Doc. No.  
21 124.) Defendant Z-Line Designs, Inc. ("Z-Line") opposes, (Doc. No. 140), and moves to  
22 strike an exhibit supporting LFCL's motion, (Doc. No. 141). Pursuant to Local Rule  
23 7.1(d)(1), the court finds the matter appropriate for resolution without oral argument. For  
24 the reasons set forth below, the court grants LFCL's motion and denies Z-Line's motion to  
25 strike as moot, without prejudice.

26 **BACKGROUND**

27 On April 18, 2016, LFCL initiated this action against Z-Line, alleging breach of a  
28 licensing agreement, breach of good faith and fair dealing, and seeking an accounting from

1 Z-Line. (Doc. No. 1.) In the scheduling order, Magistrate Judge Nita L. Stormes set  
2 October 28, 2016, as the deadline by which to amend the pleadings. (Doc. No. 32.)

3 On August 10, 2017, the court granted LFCL's motion for partial summary  
4 adjudication on the issue of whether LFCL has the contractual right to conduct a royalty  
5 audit. (Doc. No. 99.) The court directed the parties to raise any issue relating to the scope,  
6 conditions, or terms of the royalty audit before Magistrate Judge Stormes. (Id.) Fifteen  
7 days later, Magistrate Judge Stormes ordered the parties to proceed with the royalty audit,  
8 in accordance with the licensing agreement, and to complete that audit by December 29,  
9 2017. (Doc. No. 100.)

10 The parties jointly engaged Paul Crystal of Crystal Advisory Services ("CAS") to  
11 audit Z-Line's sales of the licensed products and the royalties Z-Line had paid, to cover the  
12 third quarter of 2013 through the third quarter of 2017. The audit was not completed on  
13 time. On March 19, 2018, the court granted the parties' joint motion to continue trial  
14 because CAS did not anticipate completing the audit report until April. (Doc. No. 116.)

15 CAS issued the audit report on May 14, 2018. (Doc. No. 147, Ex. 1.) CAS, in the  
16 audit report, determined that between the third quarter of 2013 through the third quarter of  
17 2017, Z-Line's original royalty payment of \$1,510,260 should have been \$3,670,954. (Id.)  
18 As a result, \$2,160,694 was underreported and underpaid. (Id.) Based in part on the  
19 information obtained from the audit report, on June 13, 2018, LFCL filed the instant motion  
20 to modify the scheduling order and for leave to file a first amended complaint. (Doc. Nos.  
21 124 (redacted), 147 (under seal).) LFCL seeks to supplement the complaint so that its  
22 claims cover the entire audit period, and to amend it to add a claim for fraud. (Id.)

## 23 **LEGAL STANDARDS**

### 24 **I. Federal Rule of Civil Procedure 16**

25 When a plaintiff seeks to amend the complaint after the time specified in a  
26 scheduling order, Federal Rule of Civil Procedure ("Rule") 16 applies. Once issued, a  
27 scheduling order cannot be modified except upon a showing of good cause. Fed. R. Civ.  
28 P. 16(b). The "good cause" standard primarily considers the diligence of the party seeking

1 the amendment. Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000).

## 2 **II. Federal Rule of Civil Procedure 15**

3 Rule 15 provides that leave to amend should be granted when justice requires it.  
4 Fed. R. Civ. P. 15(a)(2). The court may, “on just terms, permit a party to serve a  
5 supplemental pleading setting out any transaction, occurrence, or event that happened after  
6 the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d). Amendment may be  
7 denied, however, when there is evidence of undue delay, bad faith, undue prejudice, or  
8 futility. Foman v. Davis, 371 U.S. 178, 182 (1962). “The standard for granting leave to  
9 amend is generous.” United States v. Corinthian Colleges, 655 F.3d 984, 995 (9th Cir.  
10 2011) (internal quotation omitted).

## 11 **DISCUSSION**

12 LFCL asks the court to modify the scheduling order and grant it leave to file the  
13 proposed First Amended and Supplemental Complaint (“FAC”).

### 14 **I. Scheduling Order Modification**

15 Here, the deadline to amend the pleadings passed on October 28, 2016. (Doc. No.  
16 32.) LFCL’s fraud claim is based on the audit report from CAS, which it did not receive  
17 until May 14, 2018. Additionally, the time period over which LFCL seeks to supplement  
18 its original complaint had not yet come to pass by the October 28, 2016 deadline.

19 Z-Line argues that “[a]ll of the information upon which LFCL seeks to amend its  
20 complaint have been known to it since 2017” through documents produced in discovery,  
21 and thus LFCL did not act diligently. (Doc. No. 140 at 4.) However, Z-Line itself notes  
22 that some of the information was produced “because Z-Line’s expert CPA advised Z-Line  
23 that for an auditor to determine whether all royalties had properly been reported and paid,  
24 an auditor would have to cross-check the sales of the licensed products against all product  
25 sales.” (Doc. No. 140-1 (“Economou Decl.”) ¶ 3 (emphasis added).) The advice from Z-  
26 Line’s own expert reveals that the parties intended to rely on the auditor to evaluate the  
27 documents produced in discovery. Therefore, it is reasonable that LFCL waited until it  
28 received the auditor’s analysis in the May 2018 report by CAS before seeking to modify

1 the scheduling order. LFCL filed the instant motion a mere month after CAS issued the  
2 audit report, demonstrating its diligence in pursuing amendment.

3 Consequently, good cause exists to modify the scheduling order.

## 4 **II. Leave to File FAC**

5 The court will first address LFCL's request to supplement the complaint to cover the  
6 entire audit period, followed by LFCL's request to add a claim for fraud.

### 7 **A. Supplementing the Complaint to Cover the Entire Audit Period**

8 Z-Line argues that supplementing the complaint is unnecessary because the parties  
9 already agreed that the audit would cover the period beginning July 26, 2013, to the date  
10 on which the royalty audit was conducted. (Doc. No. 124-7.) Importantly, Z-Line does  
11 not raise any evidence of undue delay, bad faith, undue prejudice, or futility regarding this  
12 supplementation. Z-Line notes that because the parties agreed for the audit to cover  
13 through the third quarter of 2017, LFCL should have sought to supplement its complaint  
14 at the time of that agreement. However, LFCL did not receive the audit report, which  
15 revealed Z-Line's underpayments continued after the complaint was filed, until May 2018.  
16 The month delay between LFCL receiving the audit report and filing the instant motion  
17 does not reach the level of undue delay. Therefore, the court grants LFCL leave to  
18 supplement the complaint to cover the entire audit period.

### 19 **B. Amending the Complaint to Add a Fraud Claim**

20 After careful review of the parties' briefs and the proposed FAC, the court finds that  
21 LFCL has shown no undue delay<sup>1</sup> or bad faith in seeking to amend its complaint. LFCL  
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23 <sup>1</sup> Z-Line asserts that LFCL has alleged evidence of fraud since as early as September  
24 2017. (Doc. No. 140 at 11.) In support, Z-Line offers a September 14, 2017 email from  
25 LFCL's counsel, in which he stated that LFCL "must reserve the right to allow the  
26 auditor to conduct a forensic analysis . . . if the audit uncovers evidence of fraud."  
27 (Economou Decl. ¶ 2, Ex. A (emphasis added).) Once again, however, that statement  
28 was dependent on the results of the audit, which was not available to the parties until  
May 24, 2018. Therefore, it does not demonstrate undue delay. Furthermore, the court  
notes that some of the delay associated with obtaining the audit report can be attributed to

1 filed the instant motion approximately one month after receiving the audit report from  
2 CAS. As discussed above, LFCL acted diligently in doing so. The court will next address  
3 whether there is evidence of futility or undue prejudice sufficient to warrant denying  
4 LFCL's motion.

### 5 **1. Futility**

6 Z-Line argues that the proposed fraud claim is futile because it fails to state a claim  
7 upon which relief may be granted based on the heightened pleading standard of Rule 9(b).  
8 (Doc. No. 140 at 8–11.)

9 “While some courts liken the futility inquiry with that of a motion to dismiss, most  
10 recognize that denial of leave to amend on futility grounds is rare.” Contasti v. City of  
11 Solana Beach, 2010 WL 318404, at \*2 (S.D. Cal., Jan. 20, 2010) (internal quotations and  
12 corrections omitted). “In view of Rule 15(a)’s permissive standard, courts ordinarily defer  
13 consideration of challenges to the merits of a proposed amended pleading until after leave  
14 to amend is granted and the amended pleading is filed.” Hynix Semiconductor Inc. v.  
15 Toshiba Corp., 2006 WL 3093812, at \*2 (N.D. Cal., Oct. 31, 2006) (“Hynix’s arguments  
16 should be addressed in a motion to dismiss or for summary judgment, not in an opposition  
17 to the present motion for leave to amend.”).

18 After reviewing the proposed FAC, the court finds that Z-Line’s regarding futility  
19 arguments are more appropriate for a motion to dismiss.

### 20 **2. Undue Prejudice**

21 LFCL does not seek to continue the trial date, but Z-Line argues that adding the  
22 fraud claim would require reopening discovery and continuing the trial date. The court  
23 agrees that the trial could not go forward as scheduled on August 20, 2108, if LFCL is  
24 permitted to file the proposed FAC. LFCL does not oppose a short trial continuance to  
25

26  
27 Z-Line, as Z-Line opposed LFCL’s efforts to obtain an audit, (see Doc. Nos. 71, 86), and  
28 both parties spent some weeks selecting the independent, third party auditor, (see Doc.  
No. 109 at 2).

1 allow for relevant defenses and limited discovery.

2 “A need to reopen discovery and therefore delay the proceedings supports a district  
3 court’s finding of prejudice from a delayed motion to amend the complaint.” Lockheed  
4 Martin Corp. v. Network Solutions, Inc., 194 F.3d 980, 986 (9th Cir. 1999) (citation  
5 omitted). While the court recognizes that Z-Line will be somewhat prejudiced by the need  
6 to delay trial and reopen discovery on a limited basis, it does not rise to the level of undue  
7 prejudice because discovery can be limited so as to avoid prolonging proceedings any more  
8 than is necessary to address the new fraud claim. Additionally, the court finds that it serves  
9 the interest of justice to address the fraud claim in the same action, rather than requiring  
10 LFCL to initiate a second suit.

11 In sum, the liberal standard for allowing amendment under Rule 15 and the lack of  
12 undue delay, bad faith, undue prejudice, or futility support allowing LFCL to supplement  
13 and amend its complaint. Accordingly, the court grants LFCL’s motion.

### 14 **III. Z-Line’s Objection and Motion to Strike Exhibit 2 of Cole Declaration**

15 Z-Line objects to and moves to strike Exhibit 2 of the Declaration of William P. Cole  
16 in Support of Plaintiff’s Motion for Leave to Amend Complaint (“Cole Declaration”).  
17 (Doc. No. 141.) Exhibit 2 of the Cole Declaration contains the Declaration of Sidney P.  
18 Blum in Support of Plaintiff’s Motion for Leave to File First Amended Complaint (“Blum  
19 Declaration”). (Doc. Nos. 124-6 (redacted); 147-2 (under seal).) Z-Line argues, inter alia,  
20 that the Blum Declaration constitutes an expert opinion on topics beyond the scope of those  
21 identified for Mr. Blum during expert discovery. (Doc. No. 141 at 2.) Because the court  
22 did not rely on the Blum Declaration in ruling on the instant motion, the court denies Z-  
23 Line’s motion to strike as moot, without prejudice.

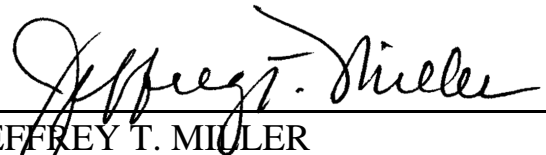
### 24 **CONCLUSION**

25 For the foregoing reasons, the court grants LFCL’s motion to modify the scheduling  
26 order and for leave to file the proposed FAC. LFCL is directed to file the FAC within  
27 seven (7) days of this order. The court denies Z-Line’s motion to strike, (Doc. No. 141),  
28 as moot, without prejudice.

1           Consequently, the court vacates the upcoming Pretrial Conference and trial dates.  
2           The parties are ordered to contact Magistrate Judge Stormes's chambers to set up a  
3           conference at which the scope of discovery and a new schedule can be determined.

4           IT IS SO ORDERED.

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6           DATED: July 23, 2018

  
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JEFFREY T. MILLER  
United States District Judge